IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE THOTTATHIL B.RADHAKRISHNAN

TUESDAY, THE 10TH JULY 2007 / 19TH ASHADHA 1929

OP.No. 19906 of 1999(T)

PETITIONER:

D.C.CHITHRAN, FORMER GENERAL MANAGER(P&A),
PLANTATION CORPORATION OF KERALA LTD.,
NOW RESIDING AT RISHIKESAM, CHERTHALA.

BY ADV. SRI.N.SUKUMARAN
SRI.S.SHYAM

RESPONDENTS:
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1. **PLANTATION CORPORATION OF KERALA LTD. ,**
REP.BY ITS MANAGING DIRECTOR,
KOTTAYAM 4.

2. **MANAGING DIRECTOR,**
PLANTATION CORPORATION OF KERALA,
KOTTAYAM 4.

BY ADV. SRI.THOMAS VELLAPPALLY
BY ADV.SRI.R.JOSEPH KODINATHRA

THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD ON 10/07/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

ORDER ON CMP. NO.32732/1999 IN OP. 19906/1999

DISMISSED

10.07.2007 SD/- THOTTATHIL B.RADHAKRISHNAN, JUDGE

APPENDIX

PETITIONER'S EXHIBITS

EXT.P1:- COPY OF THE ORDER OF THE 1ST RESPONDENT DT. 14.3.90.

EXT.P2:- COPY OF THE NOTICE TO THE 2ND RESPONDENT BY THE PETITIONER DT. 27.12.91.

EXT.P3:- COPY OF THE ORDER OF THE 2ND RESPONDENT DT. 31.12.91.

EXT.P4:- COPY OF THE LETTER ISSUED BY THE PETITIONER TO THE 2ND RESPONDENT DT. 1.3.92.

EXT.P5:- COPY OF THE ORDER OF THE 2ND RESPONDENT DT. 31.3.92.

EXT.P6:- COPY OF THE JUDGMENT OF THE JUDGMENT IN OP.4519/92 DT. 19.1.93 OF THE HONOURABLE HIGH COURT OF KERALA.

EXT.P6(a):- COPY OF THE CLARIFICATION IN JUDGMENT IN CMP. NO.12607/93 IN OP. 4519/92 DT.16.6.93.

EXT.P7:- COPY OF THE MINUTES OF THE MEETING OF THE BOARD OF DIRECTORS OF THE 1ST REP.BY DT. 1.4.93.

EXT.P8:- COPY OF THE REPORT OF THE ENQUIRY OFFICER DT. 24.6.93.

EXT.P9:- COPY OF THE MINUTES OF THE BOARD OF DIRECTORS OF THE 1ST RESPONDENT DT. 16.7.93.

EXT.P10:- COPY OF THE LETTER ISSUED BY THE 1ST RESPONDENT TO THE PETITIONER DT. 6.9.93.

EXT.P11:- COPY OF THE REPRESENTATION SUBMITTED BY THE PETITIONER BEFORE THE 2ND RESPONDENT DT. 21.10.95.

EXT.P12:- COPY OF THE NOTICE PREPARED BY THE 2ND RESPONDENT.

OP. NO.19906/1999

EXT.P12(a):- COPY OF THE RELEVANT PART OF THE MANUSCRIPT PORTION OF EXT.P12.

EXT.P13:- COPY OF THE JUDGMENT IN OP. NO.13326/93 DT. 1.6.98 OF THIS HONOURABLE COURT.

EXT.P14:- COPY OF THE REPRESENTATION FILED BY THE PETITION BEFORE THE 1ST RESPONDENT DT. 21.7.98.

EXT.P15:- COPY OF THE STATEMENT OF SRI.P.K.CHITHRA BHANU ADVOCATE DT. 4.5.92.

EXT.P16:- COPY OF THE STATEMENT OF SRI.T.V.YESODHARAN DT. 17.9.92.

EXT.P17:- COPY OF THE STATEMENT OF SRI.K.BABU , M.L.A DT. 24.4.92.

EXT.P18:- COPY OF THE ORIGINAL OF EXT.P4.

EXT.P19:- COPY OF THE LETTER ISSUED BY THE 2ND RESPONDENT TO THE PETITIONER DT. 3.5.99.

/TRUE COPY/

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THOTTATHIL B. RADHAKRISHNAN, J.

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O.P.No.19906 of 1999-T

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Dated this the 10th day of July, 2007.

JUDGMENT

Petitioner faced disciplinary proceedings while in the service of the first respondent Corporation. A punishment was imposed on him. He moved this Court by filing O.P.4519/1992. When that matter was taken up for hearing, it was submitted on 19-1-1993 that it would be sufficient, if the respondent is directed to consider and dispose of the appeal filed by the petitioner against the punishment. It was also a matter of record that by that time the petitioner had submitted an application for voluntary retirement and that he was relieved from service with effect from the afternoon of 31-3-1992.

2. Following Ext.P6 judgment, the Board of the Corporation considered the matter and thought it fit to appoint another enquiry officer. Accordingly, by order dated 24-4-1993, a retired judicial officer was appointed as the Enquiry Officer. This led to Ext.P8 report wholly exonerating the petitioner of all the charges.

3. While it is the case of the petitioner that the application submitted by him for voluntary retirement was withdrawn by him as per Ext.P3 dated 1-3-1992, the respondents always stood to assert that such a document was never communicated to them.

4. The petitioner filed O.P.13326/1993 challenging the decision of the management refusing to treat him as entitled to continue in service till the date of superannuation ignoring the voluntary retirement. Pending consideration of that writ petition, the petitioner

made yet another representation to the respondents and by Ext.P13 judgment, the petitioner was relegated for consideration of such representation by the first respondent Corporation. Thereafter, the Board of the Corporation decided to reject the representation of the petitioner and such decision was communicated to the petitioner as per Ext.P19.

5. The learned counsel for the respondents has placed before me the communication on the basis of which the petitioner has received amounts due on voluntary retirement. It has been endorsed thereon that receipt of such amounts is without prejudice to the rights of the petitioner in prosecuting O.P.13326/1993 which led to Ext.P13 judgment. Therefore, the question as to whether the application for voluntary retirement was accepted or not was a matter open for the respondents to decide. While the petitioner has produced certain materials in the form of

statements of three persons to assert the actual delivery of Ext.P4 to the respondents, I do not deem it necessary to go into that question because, the sequence of events would, by itself, resolve the issue.

6. The petitioner was found guilty of the acts of misconduct levelled against him. An order of punishment was imposed on him. He, thereafter, admittedly made an application to leave the service on voluntary retirement. Ext.P5 shows that he was relieved with effect from the afternoon of 31-3-1992. If that were so and if the respondents had decided to let the petitioner voluntary retired, there would have been no jurisdiction or legitimacy for the further disciplinary proceedings in the form of a de novo enquiry on 24-4-1993 leading to Ext.P8. So much so, it does not appear to have been the clear intention of the parties that the jural relationship between the petitioner and the respondents remained snapped once for all,

following the issuance of Ext.P5. Under such circumstances, particularly when the enquiry instituted against the petitioner has concluded in the form of Ext.P8, the respondents were duty bound to take a final decision on the basis of the findings in that report. This means that the so-called voluntary retirement would not affect the rights of parties except for adjustment of monetary benefits that have accrued to either side on account of such decision.

For the foregoing reasons, this writ petition is allowed quashing Ext.P19 and it is directed that the respondents will take up Ext.P8 enquiry report, which is stated to have been already accepted and acted upon as per Ext.P9. The only question that would remain for decision is as to whether the petitioner is entitled to emoluments from the date of his alleged voluntary retirement (31-3-1992) till his due date of superannuation

(31-5-1994). Having regard to the fact that the petitioner has been wholly exonerated of the charges, there is no reason why he should not be extended the benefits by way of emoluments for that period also, however with the liability for adjustment of amounts paid to him on 26-11-1993, in accordance with law. It is so declared. No costs.

THOTTATHIL B. RADHAKRISHNAN,
JUDGE.

Sha/-

THOTTATHIL B. RADHAKRISHNAN, J.

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O.P.No.19906 of 1999-T

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JUDGMENT

Dated: 10th July, 2007.